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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES, in their ) No. C 07-04784 EMC  
capacities as Trustees of the LABORERS )  
HEALTH AND WELFARE TRUST FUND )  
FOR NORTHERN CALIFORNIA; )  
LABORERS VACATION-HOLIDAY TRUST ) **PLAINTIFFS' NOTICE OF MOTION**  
FUND FOR NORTHERN CALIFORNIA; ) **AND MOTION FOR DEFAULT**  
LABORERS PENSION TRUST FUND FOR ) **JUDGMENT**  
NORTHERN CALIFORNIA; and LABORERS )  
TRAINING AND RETRAINING TRUST )  
FUND FOR NORTHERN CALIFORNIA, )

Plaintiffs,

v.

CHESTER L. NEAL, Individually and doing  
business as C.L. NEAL CONSTRUCTION,

Defendant.

Date: August 20, 2008  
Time: 10:30 a.m.  
Judge: Honorable Edward M. Chen  
Courtroom: C, 15th Floor

Plaintiffs, THE BOARD OF TRUSTEES, in their capacities as Trustees of the  
LABORERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA;  
LABORERS VACATION-HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA;  
LABORERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA; and LABORERS  
TRAINING AND RETRAINING TRUST FUND FOR NORTHERN CALIFORNIA (hereinafter

“Plaintiffs”) submit the following Motion For Default Judgment against Defendant CHESTER L. NEAL, Individually and doing business as C.L. NEAL CONSTRUCTION, (hereinafter “Defendant”).

# **I. NOTICE**

TO THE DEFENDANT:

PLEASE TAKE NOTICE that on August 20, 2008 at 10:30 a.m. in the courtroom of the Honorable Magistrate Judge Edward M. Chen of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, Courtroom C, 15th Floor, San Francisco, California, the Plaintiffs will move, and hereby do move, the Court to order that a default judgment against Defendant be entered in this action, to compel Defendant to forthwith submit to an audit of his books, records, papers and reports as required by the Agreements to which he is bound. The motion will be brought pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure (F.R.C.P.), and will be based on the following grounds. The Clerk entered default against the Defendant on February 21, 2008, who were timely served with the complaint, whose service was deemed complete on January 19, 2008, but failed to answer the complaint.

Plaintiff Trust Funds are therefore entitled to entry of default judgment against the Defendant under F.R.C.P. 55(b)(2) by the Court. This Notice and Motion are supported by the Memorandum Points and Authorities, Declaration of John Hagan and exhibits thereto, Declaration of Kristina Zinnen, and a proposed form of judgment, all of which are filed concurrently herewith.

# **II. MOTION**

Plaintiff Trust Funds, by and through their undersigned counsel, hereby apply, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, for judgment by default in their favor and against Defendant for Plaintiffs respectfully request that the Court enter a default judgment in favor of the Plaintiff Trust Fund against Defendant in which it is ordered that: (1) Defendant shall submit to a full audit by auditors the Plaintiffs will select, at the premises of Defendant, or the premises where its records are kept, during business hours, at a reasonable time or times, and to allow the auditors to examine and copy such books, records, papers, and reports of Defendant

relevant to the enforcement of the Collective Bargaining Agreement or Trust Agreement, including but not limited to the following:

Individual earning records (compensation); W-2 forms; 1096 and 1099 forms; reporting forms for all Trust Funds; State DE-3 tax reports; workers compensation insurance report; employee time cards; payroll journal; quarterly payroll tax returns (form 941); check register and supporting cash voucher; Form 1120 - 1040 or partnership tax returns; general ledger - (portion relating to payroll audit);

(2) Defendant shall forthwith cease its refusal to submit to an audit of its books, records, papers, and reports as the agreements to which they are bound require; (3) upon completion of the audit, Defendant shall pay over to Plaintiffs such sums as shall be ascertained to be due from Defendant and interest on those sums; (4) Defendant shall pay actual damages according to proof; (5) Defendant is permanently enjoined, for so long as it remains obligated to contribute to Plaintiffs Trust Funds, from failing, neglecting, or refusing to timely submit required monthly contributions reports and payments as the terms of the collective bargaining agreement, Trust Agreement, and the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA") sections 502(a)(3), (g)(2), 29 U.S.C. § 1132(a)(3), (g)(2) require; (6) Defendant shall pay attorneys' fees and costs in the amount of \$5,713.85; (7) such further relief as the Court deems just and proper; and (8) this Court retains jurisdiction of this matter to enforce the Order compelling an audit and payment of all amounts found due and owing.

The grounds for this application are as follows:

1. The Clerk of the Court entered default against the Defendant on February 21, 2008 for failure to answer or otherwise respond to the complaint on file in this action; and
2. Plaintiffs are entitled to the relief sought herein.

Dated: June 24, 2008

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/  
KRISTINA M. ZINNEN  
Attorneys for Plaintiffs

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